

PT 95-60
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

```
-----  
EAST PEORIA JAYCEES      )  
    HOUSING CORPORATION  )  
        Taxpayer         )    Docket #   92-90-45  
                           )    Parcel Index # 02-02-30-118-003  
        versus.          )  
                           )    Barbara S. Rowe  
THE DEPARTMENT OF REVENUE )    Administrative Law Judge  
OF THE STATE OF ILLINOIS )  
-----
```

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Gary Orr, Attorney for East Peoria Jaycees Housing Corporation

SYNOPSIS: The Tazewell County Board of Review filed an Application for Property Tax Exemption To Board of Review - Statement of Facts with the Illinois Department of Revenue (the "Department") for East Peoria Jaycees Housing Corporation (the "Applicant"). The Department denied the application finding that the property was not in exempt ownership and use. The applicant filed a protest to the findings of the Department and requested a hearing. At the hearing it was ascertained that the applicant is exempt from federal income tax pursuant to a 501(c)(4) designation. The applicant operates Leisure Acres Phase I, the name of the parcel for the requested exemption. Phase I was financed through an Illinois Housing Development Association ("IHDA") 236 program.

Another organization, also affiliated with the members of the applicant, owns and operates Leisure Acres Phase II which was granted an exemption by the Department. The other organization has a 501(c)(3) designation from the federal government and was financed through a federal Housing and Urban Development ("HUD") 202 project. It is recommended that

the Director of the Department find that the parcel in question was not in exempt ownership and use for the taxable year in question.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Tazewell County permanent parcel index number 02-02-30-118-003 did not qualify for property tax exemption was established by admission into evidence of Dept. Ex. Nos. 1-6.

2. East Peoria Jaycees, a not-for profit civic organization, felt that there was a need for low-income housing for the elderly in their area. They sought advice of attorneys and experts as to how to accomplish this goal. The attorneys and experts suggested the formation of the applicant. (Tr. pp. 12-14)

3. The applicant was incorporated under the Illinois not-for-profit corporation act on December 19, 1972. Their purpose is:

This corporation is organized under the Illinois General Not For Profit Corporation Act and pursuant to the applicable provisions of the Illinois Housing Development Act for the purpose of providing adequate, safe and sanitary housing accommodations for elderly persons of low and moderate income subject to the applicable provisions of the Illinois Housing Development Act and the applicable rules, regulations and procedures promulgated by the Illinois Housing Development Authority (IHDA). (Dept. Ex. No. 1)

4. The by-laws of the applicant provide for a certificate of membership for each member when the member has been elected to the membership and paid any initiation fee and dues that may be required. (Dept. Ex. No 1(2)(C))

5. The applicant acquired Tazewell Parcel Index #02-02-30-118-003 by a trustee's deed dated July 15, 1974. (Dept. Ex. No. 1)

6. The Applicant is exempt from payment of Federal income tax pursuant to a 501(c)(4) designation letter from the Internal Revenue Service dated June 15, 1977. (Dept. Ex. No. 1)

7. The applicant thought the designation was as a 501(c)(3)

organization. (Dept. Ex. No. 1; Tr. pp. 30-31).

8. The applicant obtained an interest free loan from IHDA for \$37,000.00 for the development of the 101 units of the housing development for the elderly. (Tr. p. 16; App. Ex. A-18)

9. Applicant also obtained a commitment for \$2,240,000.00, 100% of the development costs, from IHDA pursuant to a 236 interest reduction program. For that sum, the applicant was required to enter into a regulatory agreement with IHDA. (Tr. p. 17; App. Ex. No. A-2)

10. The loan from IHDA, pursuant to the 236 interest reduction program, charged 1 and 1/2% interest on the obligation. (Tr. pp 29-30; App. Ex. A-3)

11. Applicant executed a mortgage note for the loan amount with the Community Bank of East Peoria. (App. Ex. No. A-3; Tr. p. 17)

12. The regulatory agreement is still in effect and IHDA supervises the actions of applicant pursuant to that agreement. (Tr. pp. 17-19)

13. There is a rent supplement program for 40 units of Phase I in effect. (Tr. p. 30)

14. In order to qualify for the rent supplement program, a tenant may not earn in excess of 80% of the area median income. If after moving in, a tenant's income exceeds that amount, the tenant may remain in the development and pay market rent. (Tr. p. 49)

15. Applicant's lease, a standard IHDA form, provides for a security deposit and a right of the owner of the property to terminate the lease due to the failure of the tenant to pay the monthly rent. (Dept. Ex. No. 1)

16. The applicant's security deposit for Phase I is approximately one month's rent with a minimum of \$50.00. (Tr. p. 52)

17. Applicant calls the parcel in question Phase I of Leisure Acres. Phase II of Leisure Acres is an adjacent parcel of land that is operated in a similar manner to Phase I. Leisure Acres Phase II was granted a property

tax exemption by the Department pursuant to Docket Number 92-90-39. (App. Ex. A-19)

18. Phase I and Phase II are adjoining complexes and when viewed can not be physically separated from each other. The entire facility, known as Leisure Acres, consists of 28 buildings on 27 acres of land. (App. Ex. A-9, A-17; Tr. p. 20)

19. No one has ever been evicted from either Phase I or Phase II of the complex due to inability to pay rent, nor has anyone been denied admission solely because they could not pay the required security deposit. (Tr. pp. 28; 52)

20. Phase I has 101 units and consists of buildings numbered 1 through 12. It consists of 65 one-bedroom units, 1 two-bedroom unit and 35 efficiency units. (Tr. pp. 20-22)

21. The two bedroom unit is occupied by the site manager. (Tr. p. 36)

22. For 1992, the applicant's revenue was \$182,769.00 from apartment rentals and \$191,079.00 from housing assistance payments. The Applicant had a net loss of \$20,499.00 for that year. (App. Ex. A-10)

23. The primary source of income for the applicant is from rents paid by residents and funding from the federal government. (Tr. pp. 39-40)

24. Applicant has no capital or capital stock, shareholders or shares. The applicant is not allowed to make a profit from this endeavor. (Tr. p. 43)

25. Phase II consists of buildings numbered 13-28. (Tr. p. 20)

26. Phase II is owned by Leisure Acres Phase II Housing Corporation. (App. Ex. A-19)

27. A 501(c)(3) designation was granted by the Internal Revenue Service to Leisure Acres Phase II Housing Corporation on June 29, 1981. (App. Ex. B-L)

28. Phase II was a HUD 202 project. Section 202 projects refer to 8 housing assistance payment contracts. Leisure Acres Phase II Housing Corporation entered into a 8 agreement with HUD for Phase II. (Tr. pp. 25-26)

29. When Phase I was being developed in 1973, federal 202 funds were not available. (Tr. p. 29)

30. Tenants of only 40 of the available 101 units are able to qualify for subsidized housing. Of the remaining 61 units, the applicant has no written policy for the waiver of fees if a resident is unable to afford the rent. (Tr. pp. 40, 57)

31. According to the applicant's attorney and bookkeeper, a 501(c)(4) designation was all that was required of the applicant at the time that Phase I was established in order to qualify for a sales tax exemption and a federal income tax exemption. (Tr. pp. 31-33)

32. The applicant could not get funding through IHDA for Phase II and therefore elected to get funds under the federal HUD 202 program. (Tr. pp. 37-38)

33. The applicant was advised that HUD would not mix funds with an IHDA project and that is why Leisure Acres Phase II Housing Corporation was formed. (Tr. pp. 40-41)

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The statutes of Illinois have provisions for property tax exemptions. In particular 35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

The Internal Revenue Code exempts certain organizations from federal income tax. In part it states, under Section 501:

EXEMPTIONS FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(c) LIST OF EXEMPT ORGANIZATIONS.-The following organizations are referred to in subsection (a):

(a) EXEMPTION FROM TAXATION.-An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a

tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

Based upon the facts presented and the law above, I find that the applicant is a civic organization pursuant to the 501(c)(4) designation granted by the Internal Revenue Service. As such, I find that applicant has failed to establish that they are a charitable organization. The statute is specific that a 501(c)(3) organization may be granted an exemption. This designation the applicant does not have and the statutes are to be strictly construed. There is no similar provision for a 501(c)(4) organization.

In *Oak Park Club v. Lindheimer*, 369 Ill. 462 (1938), the Illinois Supreme Court found that the fact that no profit was made by a corporation claiming to be a charitable organization was not of controlling importance in determining whether its property was exempt from taxation.

In *Crerar v. Williams*, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in nature.

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in

determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

I find that the funds derived by the applicant are from rent and from a housing assistance program. As such, the applicant has failed to establish that the funds are derived mainly from private and public charity and are held in trust for the objectives and purposes expressed in its charter.

Tenants of only 40 of the available 101 units are able to qualify for subsidized housing. Of the remaining 61 units, the applicant has no written policy for the waiver of fees if a resident is unable to afford the rent. Therefore, applicant has failed to show that no obstacles are placed in the way of those seeking the benefits, that the benefits derived are for an indefinite number of persons and the primary use of the property is for charitable purposes.

Also, the applicant's by-laws have a provision for certification of membership for those persons who are elected to membership and pay the appropriate dues and initiation fee. There is no provision for waiver of the fee and no testimony or evidence was submitted that any fees were waived. There was also no testimony regarding the election of membership requirement. As such, I find that the applicant has failed to show that the benefits are derived for an indefinite number of persons.

I am not convinced by applicant's argument that *Krause v. Peoria Housing Authority*, 370 Ill. 356 (1939), is controlling in this matter and stands for the proposition that organizations that provide housing in the manner that the applicant does are, as a matter of law, charitable pursuant to the constitutional provisions and Section 7 of the Revenue Code. At issue here is a civic organization as the owner of a housing complex, not a State or municipality which created a housing authority pursuant to "an act in relation to housing authorities" as was the taxpayer at issue in *Krause*. *Id.* at 364. Nor was the applicant herein formed to eradicate slums as in *Krause*.

Furthermore, the applicant here is a private housing corporation not a municipal housing authority, whose powers are derived from and limited to those created by the legislature. In *Krause*, the purpose for the Illinois Housing Act, enacted pursuant to the Laws of 1938 and which established the Peoria Housing Authority, was the eradication of slums. *Krause*, in citing the Act, states:

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of municipal corporations to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects; and that the powers herein conferred upon the housing authorities, including the power to acquire property, to remove unsanitary or substandard conditions to construct and operate housing accommodations, to regulate the maintenance of housing projects and to borrow, expend and repay moneys for the purposes herein set forth, are public objects and governmental functions essential to the public interest. This act enables our State and municipalities to take advantage of the provisions of the Federal Housing act..... *Id.* at 360

Contrary to the applicant's bare assertions, I do find in re *Application of Clark*, 80 Ill.3d 1010 (1980), pertinent in addressing the issue of whether a private housing corporation qualified for a property tax exemption. The Court in *Clark* found determinative the fact that the

taxpayer's operating funds did not come primarily from public or private charity but rather from rent payments by residents and the federal subsidy. Id at 1013. Thus, the Clark court held Marian Park, Inc., the owner of the property, was not a charitable organization, nor did the property qualify for a property tax exemption. The similarities between Clark and this matter cannot be dismissed and I find Clark persuasive authority in making my recommendation.

I therefore recommend that the Director of the Department find that Tazewell Parcel Index Number 02-02-118-003 was not in exempt ownership and use for the 1992 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

November 6, 1995